

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

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MV PUBLIC Transportation, INC.

and

JOHN D. RUSSELL, AN INDIVIDUAL

and

LOCAL 1181-1061, AMALGAMATED TRANSIT
UNION, AFL-CIO

and

ERIC BAUMWOLL, AN INDIVIDUAL

and

LOCAL 707, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, Party to the Contract

LOCAL 707, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

And

JOHN D. RUSSELL, AN INDIVIDUAL

:
:
: Case Nos. 29-CA-29530
29-CA-29760

:
: Case No. 29-CA-29544
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Case No. 29-CA-29619

Case No. 29-CB-13981

:

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EXCEPTIONS OF RESPONDENT LOCAL 707,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS TO THE
DECISION OF ADMINISTRATIVE LAW JUDGE MICHAEL ROSAS

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PRELIMINARY STATEMENT

Pursuant to the provisions of Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Local 707, International Brotherhood of Teamsters, one of the Respondents in this proceeding, (hereinafter referred to as “Local 707”) hereby files these Exceptions to the Decision of the Administrative Law Judge Michael A. Rosas,¹ along with the attached Brief in Support of Exceptions. The ALJ issued his decision on June 7, 2010. Thereafter, on June 14, 2010, ALJ Rosas issued a Supplemental Decision entitled “Errata.” These Exceptions and the Brief in Support of Exceptions will focus on both the original Decision and the Errata Supplemental Decision.

Exception 1: Local 707 excepts to the finding that the underlying charges were “timely filed” and that “dismissal pursuant to Section 10 (b) is denied.” (ALJD, p. 19, l. 25-27).²

Exception 2: Local 707 excepts to the ALJ’s ruling that the six-month statute of limitations did not start to run until October 5, 2008 when the *Dana* Notice was posted. (ALJD p. 19, l. 31-37).

Exception 3: Local 707 excepts to the factual finding that neither the Employer MV Public Transportation (hereinafter referred to as the “Employer” or “MVP”) nor Local 707 kept bargaining unit employees advised of developments in the organizing and/or recognition process (ALJD, p. 9, l. 12).

Exception 4: Local 707 excepts to the ALJ’s finding that at the time of recognition of Local 707, MVP was not engaged in its normal business operations. (ALJD, p. 6, l. 13-15, footnote 20, lines 37-38; p. 9, l. 7-16; p. 16, l. 18-27).

¹ Hereinafter referred to as “ALJ Rosas” or the “ALJ.”

² References to the Decision of the Administrative Law Judge will be noted as ALJD and followed by the appropriate page and line numbers; references to the Errata document issued by the Administrative Law Judge will be noted as ALJD Errata, and followed by the appropriate page and line numbers.

Exception 5: Local 707 excepts to the ALJ's ruling that at the time its recognition of Local 707, MVP did not employ a representative complement of employees. (ALJD p. 14, l. 34-p. 15, l. 11).

Exception 6: Local 707 excepts to the holding that "By recognizing local 707 as the collective-bargaining representative of its employees, on September 12, 2008, at a time when the Company did not employ a representative segment of its ultimate employee complement and was not yet engaged in its normal business operations, the Company violated Section 8 (a) (2) and (1) of the Act." (ALJD, p. 21, l. 35-38).

Exception 7: Local 707 excepts to the holding that "By executing a collective-bargaining agreement with Local 707 on September 12, 2008, which agreement contained a union-security clause, notwithstanding the fact that Local 707 did not represent an uncoerced majority of the Company's employees, the Company violated Section 8(a), (1), (2), and (3) of the Act." (ALJD, p. 21, l. 40-43).

Exception 8: Local 707 excepts to the holding that "having accepted unlawful recognition from the Company on September 12, 2008, having received unlawful assistance from the Company on October 20, 2008, and entering into and maintaining the aforementioned collective bargaining agreement, Local 707 violated Sections 8 (b) (1) (A) and 8 (b) (2) of the Act." (ALJD, p. 21, l. 45-48)

Exception 9: Local 707 excepts to the ALJ's Remedy and Order directing MVP and Local 707 to cease applying the terms of their Collective Bargaining Agreement (ALJD, p. 22, l. 14-16, 41-42, and ALJD Errata p. 2, 13-15).

Exception 10: Local 707 excepts to the ALJ's Remedy and Order that directs MVP to cease recognizing Local 707 and directs Local 707 to cease accepting recognition from the Employer (ALJD, p. 22, l. 12-14, 37-39, p. 23, l. 17-19, ALJD Errata p. 2, l. 8-11).

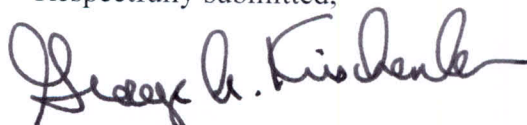
Exception 11: Local 707 excepts to the ALJ's holding that the Employer and Local 707 should reimburse their employees and members for dues and initiation fees "involuntarily exacted from them as a result of the unlawful application of the union-security clause in the collective-bargaining agreement." (ALJD p. 22, 17-21; p. 23, l. 21-24; ALJD Errata p. 2, l. 26-32).

Exception 12: Local 707 excepts to the ALJ's credibility rulings in that he resolved virtually all credibility issues against Respondents' witnesses and a clear preponderance of the evidence establishes that these rulings are incorrect. (ALJD p. 9, footnote 40, lines 21-51).

In addition, Local 707 hereby adopts and joins in any and all Exceptions raised and put forward by the Employer in this matter.

Based upon the above Exceptions to the Decision of the ALJ, and the arguments raised in the attached Brief in Support of Exceptions, Local 707 respectfully submits that the ALJ's Decision should be overturned in its entirety and the Complaint in this matter should be dismissed in its entirety.

Respectfully submitted,



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Dated at: New York,
New York, July 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of July 2010 caused the foregoing Exceptions to the Decision of Administrative Law Judge Michael Rosas to be served electronically via the NLRB's e-filing system and further certify that I have caused copies of the foregoing document to be served via electronic mail on the following:

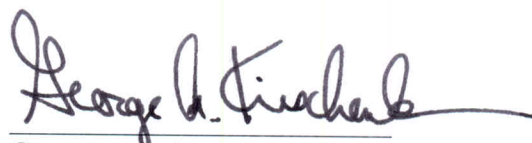
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